IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.2650 OF 1999

WITH

SPECIAL CIVIL APPLICATION NOS.1794 OF 2002 & 1844 OF 2002

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BANK OF BARODA RETIRED OFFICERS' ASSOCIATION & ANR.

Versus

CHAIRMAN AND MANAGING DIRECTOR,
BANK OF BARODA & ANR.

Appearance:
MR. B.G. JANI and
MR. DEVESH A. BHATT for Petitioners
MR. DARSHAN M. PARIKH for Respondents

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 04/03/2004

COMMON ORAL JUDGEMENT

1. All these matters are notified for final hearing

at Serial No.4. In the morning, Mr.Devesh A.Bhatt, learned Advocate appearing for the petitioner in Special Civil Application Nos.1844 of 2002 and 1794 of 2002, requested for time, which was declined. Thereafter, the learned Advocate remained present and the hearing of the matters started. Mr.B.G.Jani, learned Advocate for the petitioners in Special Civil Application No.2650 of 1999, made his submissions. Mr.Devesh A.Bhatt, the learned Advocate, was present through out in the first sitting. In the second sitting, Mr.Devesh, A.Bhatt, the learned Advocate, is not present. On completion of submissions made by Mr.B.G.Jani, learned Advocate for the petitioners in Special Civil Application No.2650 of 1999, Mr.Darshan M.Parikh, learned Advocate for the respondents appearing in all the matters, is heard and all these petitions are decided by this common judgement.

2. All these petitions have a common question regarding the applicability of the pension regulations. So far as Special Civil Application No.2650 of 1999 is concerned, it is filed by Bank of Baroda Retired Officers' Association, through its General Secretary-Shri V.T.Makwana, and Shri G.R.Thalnerkar. In paragraph-14 of Special Civil Application No.2650 of 1999, it is stated as under:

> "The petitioners respectfully submit that other members of the petitioner association viz. (1) Mr.A.I.Patel (2) Mr.P.K.Diwan (3) Mr.J.P.Dubey (4) Mr.H.P.Dhussa (5) Mr.S.Padmanabham (6) Mr.H.L.Desai (7) Mr. K.Rangaswami have also received the same reply by the respondent No.2 in response to his representation. A copy of letter refusing to give benefit of addition of qualifying service in term of regulation 26 issued by respondent No.2 on 14/6/97 to Shri A.I. Patel is enclosed herewith and marked as Annexure "J". There are other retired officers who are members of the petitioner No.1 association have represented their case to give benefit of addition of five years of qualifying service but the same are not considered/replied by the respondent bank or denied on the same line as denied to petitioner No.2 and Mr.A.I.Patel."

Besides the aforesaid averments, no other details of any of the retired officers are placed on record to establish that they fulfil the requirements set out in Clauses (a), (b) and (c) of Regulation-26 of the Bank of Baroda (Employees') Pension Regulations, 1995 ("the Regulation" for short).

3. Mr.B.G.Jani, learned Advocate appearing for the petitioners, submitted that in the representation of petitioner no.2, at Annexure-H (Special Civil Application No.2650 of 1999), the facts are set out, on the basis of which, it can be inferred that petitioner no.2 satisfies the requirements of Clauses (a), (b), and (c) of Regulation-26. But then, what is set out in the representation is not found sufficient to hold that the aforesaid requirements stand satisfied by petitioner no.2. So far as other persons, whose names are mentioned in paragraph-14 of the petition, are concerned, in absence of any details qua them, the case does not warrant any consideration at the hands of this Court.

4. The petitions deserve to be rejected on more than one ground. The first and the foremost of them is the prayer clause. What is prayed in Special Civil Application No.2650 of 1999 is as under:

> "(A) Your Lordships may be pleased to issue writ of mandamus or any other appropriate writ, order or direction quashing and setting aside the impugned decision of the respondents refusing to give benefit of addition of five years qualifying service in special circumstances as provided in regulation 26 of Bank of Baroda (Employees') Pension Regulations, 1995 declaring to be violative of Article 14 and 16 of the Constitution of India and in violation of the said regulations itself.
>
> (B) Your Lordships may be pleased to direct the respondents to give benefit of addition of five years of qualifying service in term of regulations 26 of Bank of Baroda (Employees') Pension Regulations, 1995 to petitioner No.2 and all eligible retired officers-members of the petitioner No.1 association."
>
> (emphasis supplied)

Such prayer cannot be entertained in absence of the details of the members of petitioner no.1-Association. The details qua each of the beneficiary establishing that one is entitled to receive benefits of regulation-26 of the Regulations on conditions prescribed therein being satisfied, are also not on record, which renders the adjudication impossible.

5. Mr.B.G.Jani, learned Advocate for the

petitioners, (in Special Civil Application No.2650 of 1999) emphatically submitted that the petitioner no.1-Association is claiming the benefits of regulation-26 wherein it is provided that there will be addition to qualifying service in special circumstances.

5.1 Regulation-26 of the Regulations is as under:

"26. Addition to qualifying service in special circumstances.

An employee shall be eligible to add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded the upper age limit specified by the Bank for direct recruitment or a period of five years, whichever is less, if the service or post to which the employee is appointed is one -

(a) for which post-graduate research, or specialist qualification or experience in scientific, technological, or professional fields, is essential; and,

(b) to which candidates of age exceeding the upper age limit specified for direct recruitment are normally recruited;

(c) for which the candidate was given age relaxation over and above the maximum age limit fixed by the Bank on account of his possessing higher qualifications or experience.

This regulation is having three provisos. While determining the applicability of a regulation the provisos attached to it cannot be overlooked or brushed aside. Therefore, it is necessary to take into consideration the contents of these provisos, which read as under:

"(i) Provided that this concession shall not be admissible to an employee unless his actual qualifying service at the time he quits the service in the Bank is not less than 10 years;

(ii) Provided further that this concession

shall be admissible if the recruitment rules in respect of the said service or post contain specific provision that the service or post is one which carries benefit of this regulation;

(iii) Provided also that the recruitment rules in respect of any service or post which carries the benefit of this regulation shall be made with the approval of the Central Government."

5.2 Mr.B.G.Jani, learned Advocate for the petitioners, emphatically submitted that regulation-3 of the Regulations provides for applicability. He further submitted that by virtue of Sub.regulation-1(a) of regulation-3 of the Regulations, regulation-26 will be applicable to not only petitioner no.2, but, also to all other members of the association for whom the benefits are prayed for. Clause-(a) of Sub.regulation(1) of Regulation-3 reads as under:

"These regulations shall apply to employees who,-

(a) were in the service of the Bank on or after the 1st day of January, 1986 but had retired before the 1st day of November, 1993;"

5.3 On reading of Clause-(a) of Sub.Regulation-(1) of Regulation-3 alone, it transpires that all the regulations will be applicable to a category of employees i.e. who were in service of the Bank on or after 1st January, 1986, but had retired before the first day of November, 1993. But then, if other sub.regulations along with other relevant clauses are taken into consideration, it is clear that regulation-3 takes care of numerous situations by providing for each of them under its nine sub.regulations with various clauses attached to each of them. Perusal of these regulations along with clauses makes it clear that while determining the applicability of the regulations, it is to be kept in mind that when it is provided that, `these regulations will be applicable', it means only the relevant regulation/s will be applicable to a particular category of employees, as set out by various sub.regulations of regulation-3.

5.4 Mr.Jani, the learned Advocate, submitted that the petitioners, while in service of the Bank, were given to peruse and consider the Bank Employees' (Pension)

Regulations, 1993 ("the Draft/Preliminary Regulations" for short). The same were circulated by a letter dated 11th May, 1994 (a copy of which is produced at Annexure-A to the petition) along with a copy of the said Draft Regulations, which are titled as `Preliminary'. The learned Advocate submitted that on perusal and consideration of the provisions of the said Draft/Preliminary Regulations, petitioner no.2 and other similarly situated officers of the Bank opted for the pension scheme. That in regulation-13 of the Draft/Preliminary Regulations, it was provided for addition to qualifying service in special circumstances, which then came to be provided in Regulation-26 of the Final Regulations of 1995.

5.5 At one stage, Mr.Jani submitted that after having made, the petitioner no.2 and other officers, to exercise their option on the basis of the Draft/Preliminary Regulations, the Bank could not have changed the clause relating to `addition to qualifying service' and in doing so, the Bank has not acted bona fide. But then, he has not pressed this contention and has decided to press the contention that, `even under the final Regulations, the petitioner no.2 and other similarly situated officers are entitled for `addition of specified period to the qualifying service'.

5.6 Mr.Jani submitted that petitioner no.2 had exercised his option by a letter dated 1st July, 1994 and had sought for the benefits of `addition of the qualifying service' under regulation-13(c) of the Draft/Preliminary Regulations. He further submitted that petitioner no.2 and other officers, were awaiting the benefits under the Draft/Preliminary Regulations of addition to the qualifying service. It was only when the petitioner no.2 received a letter dated 12th December, 1995, the petitioners came to know about the denial. The letter dated 12th December, 1995 reads as under:

> "As regards the addition to qualifying service we write to advise that this issue would be examined by the competent authority as and when competent authority for this purpose is appointed under the pension Regulations. This issue would be dealt with after the Pension Scheme becomes fully operationalised at appropriate time and your case would be put up to the competent authority in due course."

From the sequence in which the documents are produced, an impression is created as if the Bank has

replied to the representation of petitioner no.2 dated 1st July, 1994 belatedly, but then, the fact is that it is a reply to letter dated 27th November, 1995. The intermediary links of the correspondence are not placed on the record of this case.

5.7 The learned Advocate for the petitioner submitted that thereafter, the matter was referred to Indian Banks' Association, which wrote letter dated 27th June, 1995 to the Assistant General Manager (S.A.PEN & TL BFTS), Bank of Baroda, wherein it is stated that:

> "We refer to your letter No.HO:SA:PENSION:87:1357 dated 10.6.1995. The cases mentioned in your letter will come within the purview of the Regulation 26 of Pension Regulations PROVIDED THE EMPLOYEES SATISFIES THE CONDITIONS STIPULATED THEREIN."
>
> We are of the view that such additional qualifying service is to be permitted by the competent authority nominated for this purpose in every case after satisfying the case complies with the stipulations mentioned the Regulation 26."

5.8 The learned Advocate for the petitioners submitted that by the communications dated 10th December, 1996 and 14th June, 1997 addressed to petitioner no.2 and Mr.A.I.Patel respectively, the request of the officers is finally turned down and, therefore, the present petition is filed.

6. As is mentioned in the letter dated 10th December, 1996, the matter was referred to Indian Banks Association, which, in turn, had referred the matter to the Central Government. Finally, it was clarified that the employees, employed by the Bank prior to the implementation of the Pension Scheme, are not covered under pension regulation-26. The learned Advocate for the petitioners submitted that the regulations in question are made, as is mentioned in the Notification dated 29th September, 1995, in exercise of the powers conferred by Clause (f) of sub.section (2) of Section-19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), by the Board of Directors of Bank of Baroda, after consultation with the Reserve Bank of India and with the previous sanction of the Central Government. In that view of the matter, there was no reason for referring the matter to the Central Government on the question as to whether

petitioner no.2 and the officers similarly situated are entitled to get the benefits under regulation-26 or not. This submission of Mr.Jani does not find favour with this Court for the simple reason that the management of the Bank was never against its own officers, but then, as the question involved financial repercussions, the matter was required to be referred to the Central Government so as to ensure that the interpretation of the management is not incorrect. This act of referring the matter to the Central Government for guidance on the question of applicability of regulation-26, can never be said to be uncalled for, much less mala fide on the part of the Bank. On the contrary, it is clear from the record that if the Government had accepted the demand of petitioner no.2 and other officers, the management would not and could not have denied the same.

7. Mr.Darshan M.Parikh, learned Advocate for the respondents, replying to the contentions raised by Mr.B.G.Jani, learned Advocate for the petitioners, submitted that merely because clause-(a) of sub.regulation-(1) of regulation-3 provides that this regulation will be applicable to the category of employees, who are mentioned therein, it does not ipso facto mean that all the regulations are applicable to each of the category mentioned in regulation-3. He submitted that there being as many as nine regulations in regulation-3 and there are various categories carved out, including the persons, who were to join the services of the Bank on being recruited after the notified date, all regulations cannot have application to each of the category. He strenuously submitted that Chapter-5 of the Regulations, containing regulations 28 to 34, provides for various clauses of pension. To elaborate, regulation-28 provides for superannuation pension; regulation-29 provides for pension on voluntary retirement; regulation-30 provides for `invalid pension'; regulation-31 provides for `compassionate allowance'; regulation-32 provides for `premature retirement pension'; regulation-33 provides for `compulsory retirement pension' and regulation-34 provides for `payment of pension or family pension in respect of employees who retired or died between 1.1.1986 to 31.10.1993'. He submitted that the submissions of Mr.Jani are required to be tested in light of the provisions contained in regulations 28 to 34, more particularly, when the dates, which are prescribed in clause-(a) of sub.regulation-(1) of regulation-3 coincide with the dates mentioned in regulation-34. He submitted that only because it is mentioned in regulation-3 about the applicability of the Regulations, it does not mean

that all the regulations will be applicable to the persons, who fall within the category of sub.regulation-(1). He submitted that if the submission of Mr.Jani is accepted, then, it will work havoc. The regulations can never be implemented in the manner suggested by Mr.Jani.

8. Mr.Darshan Parikh, the learned Advocate, relied upon a judgement of the Apex Court in the matter of O.N.G.C. Ltd. vs. G.S.Chugani & Anr., reported at (1999) 1 S.C.C. 194. He submitted that the Apex Court has laid down in the said decision that it is the final scheme which has the application and once a scheme is finally approved by the Central Government, the Draft Scheme does not exists and it looses its significance and cannot be sought to be implemented. He submitted that in the present case, even if it is assumed for the sake of arguments without admitting that under regulation-13 of the Draft/Preliminary Scheme, petitioner no.2 and other similarly situated officers were entitled to some benefit, the same cannot be the basis for granting of any relief. The fact that the Regulations, which finally came to be approved, after consultation with the Reserve Bank of India and with the previous sanction of the Central Government, do not provide for such benefit. Mr.Darshan Parikh, the learned Advocate, also relied upon a judgement of the Apex Court in the matter of Council of Scientific & Industrial Research, New Delhi & Anr. vs M.V.Sastry & Anr., reported in 1997(77) F.L.R. 485.

Mr.Darshan Parikh, the learned Advocate, next relied upon a decision of a Division Bench of this Court in the matter of Jatunbibi W/o Gulam Mahiyodin Sheikh & Ors. vs. State of Gujarat & Anr., reported in 41(2) G.L.R. 1588, to support his contention that the present petition is barred by delay and latches and is required to be dismissed. He submitted that even as per the annexures placed on the record of this case, the petitioner no.2 was intimated about his non-entitlement of the benefits under regulation-26 by letter dated 10th December, 1996. Still however, for no valid reasons, the petition is filed only in the year 1999, and though it is affirmed on 6th April, 1999, was moved for admission only on 16th June, 1999. Thus, not only there is delay, but an unexplained delay only on that ground, the petition be dismissed. Mr.Parikh also submitted that in fact, this is nothing but a leisure litigation undertaken by the retired officers, after having received retiral dues, at the instance of petitioner no.1, who is neither a registered association nor having any legal entity. He submitted that at the instance of petitioner no.1, no

petition is required to be entertained and no relief is required to be granted.

9. In view of the aforesaid discussion, this Court is of the considered opinion that all these petitions do not have any merits and deserve to be dismissed. In the result, all these petitions are dismissed. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)
kamlesh*